

PROPOSED CONSTITUTIONAL AMENDMENTS

PROPOSED CONSTITUTIONAL AMENDMENT— JUDGES—RETIREMENT

H. J. R. No. 57

Proposing an Amendment to Section 1—a of Article V of the Constitution of the State of Texas, by adding to said Section as presently written, the following provisions: requiring automatic retirement of certain District and Appellate Judges at age seventy-five (75) or such earlier age, not under seventy (70), as may be provided by law; creating a State Judicial Qualifications Commission and providing for its composition and the qualifications, methods of selection and terms of office of its members; defining the functions and procedures of said Commission, including the duty to investigate, and hold hearings in respect of, disability and misconduct of District and Appellate Judges and to make recommendations to the Supreme Court of Texas for involuntary retirement or removal of such Judges; empowering the Supreme Court of Texas, in its discretion, to retire such Judges for disability and to remove them for misconduct, upon recommendation of the aforesaid Commission and consideration of the record made before it; defining misconduct for which said Judges may be so removed; providing that the proceedings of said Commission shall be confidential until filed in the Supreme Court with recommendation for retirement or removal; and providing that the removal provisions hereby established shall be alternative to and cumulative of those provided elsewhere in the Constitution.

Be it resolved by the Legislature of the State of Texas:

Section 1. That Section 1—a of Article V of the Constitution of the State of Texas be amended so that said Section shall hereafter read as follows:

"Section 1—a. (1) Subject to the further provisions of this Section, the Legislature shall provide for the retirement and compensation of Justices and Judges of the Appellate Courts and District and Criminal District Courts on account of length of service, age and disability, and for their reassignment to active duty where and when needed. The office of every such Justice and Judge shall become vacant when the incumbent reaches the age of seventy-five (75) years or such earlier age, not less than seventy (70) years, as the Legislature may prescribe; but, in the case of an incumbent whose term of office includes the effective date of this Amendment, this provision shall not prevent him from serving the remainder of said term nor be applicable to him before his period or periods of judicial service shall have reached a total of ten (10) years.

"(2) There is hereby created the State Judicial Qualifications Commission, to consist of nine (9) members, to wit: (i) two (2) Justices of Courts of Civil Appeals; (ii) two (2) District Judges; (iii) two (2) members of the State Bar, who have respectively practiced as such for over ten (10) consecutive years next preceding their selection; (iiii) three (3) citizens, at least thirty (30) years of age, not licensed to practice law nor holding any salaried public office or employment; provided that no person shall be or remain a member of the Commission, who does not maintain physical residence within this State, or who resides in, or holds a judgeship within or for, the same Supreme Judicial District as another member of the Commission, or who shall have ceased to retain the qualifications above specified for his respective class of membership. Commissioners of classes (i) and (ii) above shall be chosen by the Supreme Court with advice and consent of the Senate, those of class (iii) by the Board of Directors of the State Bar under regulations to be prescribed by the Supreme Court with advice and consent of the Senate, and those of class (iiii) by appointment of the Governor with advice and consent of the Senate.

59TH LEGISLATURE—REGULAR SESSION

"(3) The regular term of office of Commissioners shall be six (6) years; but the initial members of each of classes (i), (ii) and (iii) shall respectively be chosen for terms of four (4) and six (6) years, and the initial members of class (iiii) for respective terms of two (2), four (4) and six (6) years. Interim vacancies shall be filled in the same manner as vacancies due to expiration of a full term, but only for the unexpired portion of the term in question. Commissioners may succeed themselves in office only if having served less than three (3) consecutive years.

"(4) Commissioners shall receive no compensation for their services as such. The Legislature shall provide for the payment of the necessary expense for the operation of the Commission.

"(5) The Commission may hold its meetings, hearings and other proceedings at such times and places as it shall determine but shall meet at Austin at least once each year. It shall annually select one of its members as Chairman. A quorum shall consist of five (5) members. Proceedings shall be by majority vote of those present, except that recommendations for retirement or removal of Justices or Judges shall be by affirmative vote of at least five (5) members.

"(6) Any Justice or Judge within the scope of this Section 1—a may, subject to the other provisions hereof, be removed from office for willful or persistent conduct, which is clearly inconsistent with the proper performance of his said duties or casts public discredit upon the judiciary or administration of justice; or any such Justice or Judge may be involuntarily retired for disability seriously interfering with the performance of his duties, which is, or is likely to become, permanent in nature.

"(7) The Commission shall keep itself informed as fully as may be of circumstances relating to misconduct or disability of particular Justices or Judges, receive complaints or reports, formal or informal, from any source in this behalf and make such preliminary investigations as it may determine. Its orders for the attendance or testimony of witnesses or for the production of documents at any hearing or investigation shall be enforceable by contempt proceedings in the District Court.

"(8) The Commission may, after such investigation as it deems necessary, order a hearing to be held before it concerning the removal or retirement of a Justice or Judge, or it may in its discretion request the Supreme Court to appoint an active or retired District Judge or Justice of a Court of Civil Appeals as a Master to hear and take evidence in any such matter, and to report thereon to the Commission. If, after hearing, or after considering the record and report of a Master, the Commission finds good cause therefore, it shall recommend to the Supreme Court the removal or retirement, as the case may be, of the Justice or Judge in question and shall thereupon file with the Clerk of the Supreme Court the entire record before the Commission.

"(9) The Supreme Court shall review the record of the proceedings on the law and facts and in its discretion may, for good cause shown, permit the introduction of additional evidence and shall order removal or retirement, as it finds just and proper, or wholly reject the recommendation. Upon an order for involuntary retirement for disability or an order for removal, the office in question shall become vacant. The rights of an incumbent so retired to retirement benefits shall be the same as if his retirement had been voluntary.

"(10) All papers filed with and proceedings before the Commission or a Master shall be confidential, and the filing of papers with, and the giving of testimony before, the Commission, Master or the Supreme Court shall be privileged; provided that upon being filed in the Supreme Court the record loses its confidential character.

PROPOSED CONSTITUTIONAL AMENDMENTS

"(11) The Supreme Court shall by rule provide for the procedure before the Commission, Masters and the Supreme Court. Such rule shall afford to any judge against whom a proceeding is instituted to cause his retirement due process of law for the procedure before the Commission, Masters and the Supreme Court in the same manner that any person whose property rights are in jeopardy in an adjudicatory proceeding is entitled to due process of law, regardless of whether or not the interest of the judge in remaining in active status is considered to be a right or a privilege. Due process shall include the right to notice, counsel, hearing, confrontation of his accusers, and all such other incidents of due process as are ordinarily available in proceedings whether or not misfeasance is charged, upon proof of which a penalty may be imposed.

"(12) No Justice or Judge shall sit as a member of the Commission or Supreme Court in any proceeding involving his own retirement or removal.

"(13) This Section 1—a is alternative to, and cumulative of, the methods of removal of Justices and Judges provided elsewhere in this Constitution."

Sec. 2. The foregoing Constitutional Amendment shall be submitted to a vote of the qualified electors of the State at an election to be held on the first Tuesday after the first Monday in November, 1965, at which election all ballots shall have printed thereon the following:

"FOR the Constitutional Amendment providing for the automatic retirement of District and Appellate Judges for old age, creating the State Judicial Qualifications Commission, defining its functions; and empowering the Supreme Court, upon recommendation of said Commission, to remove District and Appellate Judges for misconduct and to retire such judges in cases of disability.

"AGAINST the Constitutional Amendment providing for the automatic retirement of District and Appellate Judges for old age, creating the State Judicial Qualifications Commission, defining its functions; and empowering the Supreme Court, upon recommendation of said Commission, to remove District and Appellate Judges for misconduct and to retire such judges in cases of disability."

Sec. 3. The Governor shall issue the necessary proclamation for the election, and this Amendment shall be published as required by the Constitution and laws of this State.

Adopted by the House on April 13, 1965: Yeas 132, Nays 12; House concurred in Senate amendments on May 28, 1965: Yeas 132, Nays 7; passed by the Senate, as amended, on May 27, 1965: Yeas 21, Nays 7.

Signed by the Governor June 16, 1965.